

MEMORANDUM

TO: File Number S7-22-20

FROM: Valentina Minak Deng
Special Counsel
Office of Financial Responsibility, Division of Trading and Markets
U.S. Securities and Exchange Commission

DATE: February 19, 2021

RE: Meeting with Deutsche Bank (DB)

On February 19, 2021, Commission staff met via telephone with Erik Soderberg, James Mellstrom, Tiberio Massaro, and Ira Wurcel, in connection with the proposed order for substituted compliance for security-based swap dealers and major security-based swap participants subject to regulation in the Republic of France. Commission staff included Randall Roy, Thomas McGowan, Valentina Deng, and Carol McGee. The SIFMA representatives discussed the manner and format of unaudited financial information with respect to Securities Exchange Act rule 18a-7.

Agenda

- Summary of Reporting Requirements and Challenges
- Overview of Approach to FOCUS Reporting
- Overview of FOCUS Mapping Exercise
- Appendix: FOCUS Part IIC Proforma Financial Statements
 - Statement of Financial Condition
 - Statement of Income
 - Regulatory Capital and Ratios

Summary of Reporting Requirements and Challenges

Background

The SEC has proposed amendments to the FOCUS Report (as set out in FOCUS Report Part IIC) that will require Security Based Swap Dealers (SBSD) provide basic financial information including:

- Statement of Income
- Statement of Financial Condition
- Regulatory Capital and Capital Ratios
- Position Reporting

To help facilitate the new reporting requirement and create a consistent view across all SBSBD, the SEC has structured the new FOCUS Part IIC financial statements using the quarterly FFIEC 031 “Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices” filed by certain US Banks with the Federal Reserve Bank (FRB). Specifically, the SEC has proposed using the following schedules of the FFIEC 031:

- Schedule RI (Income Statement),
- Schedule RC (Balance Sheet) and,
- Schedule RC-R (Regulatory Capital)

Challenge

For a SBSBD that is part of a US Bank filing the FFIEC 031 with the FRB, the approach proposed by the SEC will make complying with the new reporting requirements efficient and straight-forward. However, this has created a challenge for any SBSBD that is not part of the US Bank legal entity structure and therefore, not filing the FFIEC 031 or comparable FRB report.

In lieu of using the FFIEC 031, an analysis has been done to explore alternative, publically available, financial reports that may help to comply with the new SEC reporting requirements. The following slides will provide further insight to this approach and, the challenges being faced.

Overview of Approach to FOCUS Reporting

An analysis has been done of several existing quarterly and annual, publically available, head-office reports for purposes of complying with FOCUS Part IIC Financial Reporting requirements. These reports include:

- SEC Form 20-F – Annual filing
- SEC Form 6-K – Quarterly Filing
- Financial Data Supplement (FDS) (used for quarterly capital ratios only)

The below is a table of some pertinent information regarding these reports:

Report	Accounting Basis	Regulatory Framework	Reporting Frequency	Reporting Currency	Consolidation Basis	Reporting Filing Deadline	Proposed FOCUS Filing
Form 20-F	IASB – IFRS	CRD	Annual	EURO	Consolidated	90 Days after fiscal yearend	105 days
Form 6-K	IASB – IFRS	CRD	Quarterly	EURO	Consolidated	45 Days after quarter-end	60 days
FDS	EU - IFRS	CRD	Quarterly	EURO	Consolidated	45 Days after quarter-end	60 days

Overview of Approach to FOCUS Reporting (continued)

Using these financial reports does create some challenges with regards to the SEC's objective of creating a consistent horizontal view of SBS's, including:

- Accounting Basis – US Banks will file the FFIEC 031 using US GAAP whereas foreign banks will likely use local GAAP's, such as IFRS.
- Different Regulatory Frameworks – US Banks will calculate regulatory capital and ratios under the US Basel III Standardized Approach whereas foreign banks will likely use local regulatory frameworks, such as the EU Capital Requirements Directives (CRD).
- Reporting Currency – US Bank will represent their financial statements in USD where as foreign banks will likely represent financial statements in local currencies, such as the EURO.
- Reporting Instructions – US Banks will represent the FFIEC 031 financial statements using the FRB reporting instructions whereas foreign banks utilizing their local financial reports may likely be preparing their financial reports utilizing instructions that may differ from those of the FRB. For example, what's classified as "Loans" in the FFIEC 031 may differ from what's included as "Loans" in local financial reports.
- Reporting Line Mapping Alignment – US Banks will likely be filing either the FFIEC 031, FFIEC 041 or the FR Y-9C (very similar to the FFIEC 031) which will enable them to effectively map their FRB reports to the FOCUS report. However, for foreign banks relying on local financial reports, the alignment of these reports to the FOCUS will create some challenges and may cause inconsistency even across the various foreign bank SBS who may be using various local financial reports.

The following slides will explain some of the challenges being faced.

Overview of FOCUS Mapping Exercise

As discussed in the previous slides, several consolidated financial statements have been utilized for the purposes of assessing how these reports could be used to comply with the reporting requirements as set forth in Part IIC of the FOCUS Report. Below is a summary of the challenges in mapping these financials to the FOCUS Report.

FOCUS Part IIC Line Items **Not Applicable to the Form 20-F, Form 6-K or FDS**

Income Statement

<u>FOCUS Part IIC Line Item</u>	<u>Comments</u>
5 Realized gains (losses) on held-to-maturity securities	HTM and AFS accounting standards are no longer applicable under IFRS
6 Realized gains (losses) on available-for-sale securities	HTM and AFS accounting standards are no longer applicable under IFRS

Balance Sheet

<u>FOCUS Part IIC Line Item</u>	<u>Comments</u>
2 Securities	
A Held-to-maturity securities	HTM and AFS accounting standards are no longer applicable under IFRS
B Available-for-sale securities	HTM and AFS accounting standards are no longer applicable under IFRS

Regulatory Capital

<u>FOCUS Part IIC Line Item</u>	<u>Comments</u>
4 Tier 3 capital allocated for market risk	Tier 3 Capital is not applicable under CRD

Overview of FOCUS Mapping Exercise (continued)

As discussed in the previous slides, several consolidated financial statements have been utilized for the purposes of assessing how these reports could be used to comply with the reporting requirements as set forth in Part IIC of the FOCUS Report. Below is a summary of the challenges in mapping these financials to the FOCUS Report.

FOCUS Part IIC Line Items **Not Available in the Form 20-F, Form 6-K or FDS**

Income Statement

FOCUS Part IIC Line Item	Comments
9 Trading revenue:	
A Interest rate exposures	Segmentation by these categories is not available in the 20-F, 6-K or, FDS
B Foreign exchange exposures	Segmentation by these categories is not available in the 20-F, 6-K or, FDS
C Equity security and index exposures	Segmentation by these categories is not available in the 20-F, 6-K or, FDS
D Commodity and other exposures	Segmentation by these categories is not available in the 20-F, 6-K or, FDS
E Credit exposures	Segmentation by these categories is not available in the 20-F, 6-K or, FDS
Lines 9F and 9G are to be completed by banks with \$100 billion or more in total assets that are required to complete lines 9A through 9E above.	
F Impact on trading revenue of changes in the creditworthiness of the bank's derivative counterparties on the bank's derivative assets	Segmentation by these categories is not available in the 20-F, 6-K or, FDS
G Impact on trading revenue of changes in the creditworthiness of the bank's derivative liabilities	Segmentation by these categories is not available in the 20-F, 6-K or, FDS
10 Net gains (losses) recognized in earnings on credit derivatives that economically hedge credit exposures held outside the trading account	
A Net gains (losses) on credit derivatives held for trading	Segmentation by these categories is not available in the 20-F, 6-K or, FDS
B Net gains (losses) on credit derivatives held for purposes other than	Segmentation by these categories is not available in the 20-F, 6-K or, FDS
11 Credit losses on derivatives	Segmentation by these categories is not available in the 20-F, 6-K or, FDS

Overview of FOCUS Mapping Exercise (continued)

As discussed in the previous slides, several consolidated financial statements have been utilized for the purposes of assessing how these reports could be used to comply with the reporting requirements as set forth in Part IIC of the FOCUS Report. Below is a summary of the challenges in mapping these financials to the FOCUS Report.

FOCUS Part IIC Line Items **Not Available in the Form 20-F, Form 6-K or FDS (continued)**

Balance Sheet

FOCUS Part IIC Line Item	Comments
1 Cash and balances due from depository institutions (from FFIEC 031 Schedule RC-A)	
A Noninterest-bearing balances and currency and coin	Segmentation by these categories is not available in the 20-F, 6-K or, FDS
B Interest-bearing balances	Segmentation by these categories is not available in the 20-F, 6-K or, FDS
4 Loans and lease financing receivable (From FFIEC 031 Schedule RC-C)	
A Loans and leases held for sale	Segmentation by these categories is not available in the 20-F, 6-K or, FDS
B Loans and leases, net of unearned income	Segmentation by these categories is not available in the 20-F, 6-K or, FDS
C LESS: Allowance for loan and lease losses	Segmentation by these categories is not available in the 20-F, 6-K or, FDS
D Loans and leases, net of unearned income and allowances (Line 4B minus 4C)	Segmentation by these categories is not available in the 20-F, 6-K or, FDS
7 Other real estate owned (from FFIEC 031 Schedule RC-M)	Segmentation by these categories is not available in the 20-F, 6-K or, FDS
9 Direct and indirect investments in real estate ventures	Segmentation by these categories is not available in the 20-F, 6-K or, FDS
13 Deposits	
A In domestic offices (sum of totals of Column A and C from FFIEC 031 Schedule RE-E, part I)	
1 Noninterest-bearing	Segmentation by these categories is not available in the 20-F, 6-K or, FDS
2 Interest-bearing	Segmentation by these categories is not available in the 20-F, 6-K or, FDS
B In foreign offices, Edge and Agreement subsidiaries, and IBF's (from FFIEC 031 Schedule RC-E, part II)	
1 Noninterest-bearing	Segmentation by these categories is not available in the 20-F, 6-K or, FDS
2 Interest-bearing	Segmentation by these categories is not available in the 20-F, 6-K or, FDS

Overview of FOCUS Mapping Exercise (continued)

As discussed in the previous slides, several consolidated financial statements have been utilized for the purposes of assessing how these reports could be used to comply with the reporting requirements as set forth in Part IIC of the FOCUS Report. Below is a summary of the challenges in mapping these financials to the FOCUS Report.

FOCUS Part IIC Line Items **Not Available in the Form 20-F, Form 6-K or FDS (continued)**

Regulatory Capital

<u>FOCUS Part IIC Line Item</u>	<u>Comments</u>
Capital Ratios (Column B is to be completed by all banks. Column A is to be completed by bank with financial subsidiaries)	
8 Tier 1 leverage ratio	Segmentation by Column A and B is not available in the 20-F, 6-K or, FDS
9 Tier 1 risk-based capital ratio	Segmentation by Column A and B is not available in the 20-F, 6-K or, FDS
10 Total risk-based capital ratio	Segmentation by Column A and B is not available in the 20-F, 6-K or, FDS

Overview of FOCUS Mapping Exercise (continued)

As discussed in the previous slides, several consolidated financial statements have been utilized for the purposes of assessing how these reports could be used to comply with the reporting requirements as set forth in Part IIC of the FOCUS Report. Below is a summary of the challenges in mapping these financials to the FOCUS Report.

FOCUS Part IIC Line Items **Available in the Annual Form 20-F** but **Not Available in the Quarterly Form 6-K or FDS**

Income Statement

No Issues to report.

The Quarterly 6-K provides the information we need to complete the quarterly FOCUS Part IIC Reporting (consistent with the information available on the Annual 20-F).

Regulatory Capital

No Issues to report.

While the Quarterly 6-K does not have all the information we need to complete the quarterly FOCUS Part IIC Reporting, the missing information can be found in the Quarterly Financial Data Supplement (FDS). The information used out of the FDS relates to regulatory capital and capital ratios.

Overview of FOCUS Mapping Exercise (continued)

As discussed in the previous slides, several consolidated financial statements have been utilized for the purposes of assessing how these reports could be used to comply with the reporting requirements as set forth in Part IIC of the FOCUS Report. Below is a summary of the challenges in mapping these financials to the FOCUS Report.

FOCUS Part IIC Line Items Available in the Annual Form 20-F but Not Available in the Quarterly Form 6-K or FDS (continued)

Balance Sheet

Some issues to report.

The Quarterly Form 6-K does not have all the same or equivalent information as compared to the Annual Form 20-F and as such, there are some limitations in using the 6-K to complete FOCUS reporting.

Below is a list of the Form 20-F line items where further disclosures needed to complete the FOCUS report are not available on quarterly basis in either the Form 6-K or FDS (disclosures only available on an annual basis in the 20-F).

<u>IFRS Balance Sheet Line Item (Available in Form 20-F and Form 6-K)</u>	<u>IFRS Disclosure used for FOCUS (Only Available in Form 20-F)</u>	<u>FOCUS Line Items Impacted</u>
Assets:		
Central bank funds sold and securities purchased under resale agreements	Analysis of the earliest contractual maturity of assets	Line 3, Line 3b
Non-trading financial assets mandatory at fair value through profit and loss	Analysis of the earliest contractual maturity of assets	Line 3b, Line 4, Line 11
Financial assets at fair value through other comprehensive income	Analysis of the earliest contractual maturity of assets	Line 3b, Line 4, Line 11
Goodwill and other intangible assets	Goodwill allocated to cash-generating units	Line 10a, Line 10b
Liabilities		
Central bank funds purchased and securities sold under repurchase agreements	Analysis of the earliest contractual maturity of liabilities	Line 14a, Line 14b
Financial liabilities designated at fair value through profit or loss	Analysis of the earliest contractual maturity of liabilities	Line 14b, Line 16, Line 20
Long-term debt	Analysis of the earliest contractual maturity of liabilities	Line 16, Line 19